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MADSON & METCALF
GATEWAY TOWER WEST
SUITE 900
15 WEST SOUTH TEMPLE
SALT LAKE CITY UT 84101

In re Application of	:	
Sung Soon Kang	:	DECISION ON PETITION
Application No. 10/804,893	:	TO WITHDRAW THE
Filed: March 19, 2004	:	HOLDING OF ABANDONMENT
For: ELASTIC DRAINAGE PAVEMENT	:	
COMPRISING WASTE POLYURETHANE	:	
CHIPS FOR USE ON EXISTING ROADS	:	
AND A PAVING METHOD USING THE SAME	:	

This is a decision on applicant's renewed petition to withdraw the holding of abandonment, filed in the United States Patent and Trademark Office (USPTO), on September 19, 2005.

The petition is **GRANTED**.

A review of the file record reveals that the application became abandoned for failure to respond to the Office action (Restriction requirement) mailed to applicant on November 01, 2004, setting a one-month extendable response period. A Notice of Abandonment was mailed on May 24, 2005 stating that no reply had been received. Applicant contends that the November 01, 2004 Office action was not received.

There is a strong presumption that Office communications properly addressed and delivered to the United States Postal Services, are in fact delivered to the addressee. An allegation that the Office communication was not received must be overcome by a showing that it was not received.

The showing required to establish non-receipt of an Office communication must include all of the following requirements:

- (1) A statement from the practitioner stating the Office communication was not received by the practitioner;
- (2) A statement attesting to the fact that a search of the file jacket and docket records indicates that the Office communication was not received; and
- (3) A copy of the docket record where the non-received Office communication would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

The docket records indicated above must include a copy of the list of all responses in the practitioner's office with the due date at and around December 01, 2004. See Notice entitled "Withdrawing the Holding of Abandonment When Office Actions Are Not Received," 1156 OG 53 (November 16, 1993).

Applicant's petition indicates that after careful review of the file and docket records the November 01, 2004 Office action was never received. In support thereof applicant has provided a copy of the docket record of all responses in the practitioner's office with the due date at and around December 01, 2004.

This evidence is acceptable proof of non-receipt as provided by 1156 OG 53.

The application is being forwarded to the Supervisory Legal Instruments Examiner with instructions to withdraw the abandonment, return the application to pending status and to redate and remail the Office action mailed November 01, 2004 based on the reasoning in the case of *Delgar v. Schuyler*, 172 USPQ 513.



Kenneth J. Dorner
Special Program Examiner
Patent Technology Center 3600
(571) 272-6587

KJD/rjc 10/15/05